

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CASE NO. CR413-007
)	
LEROY CHISHOLM, a/k/a Fats,)	
)	
Defendant.)	
)	

ORDER

Before the Court is Defendant Leroy Chisholm's Application for Out of Time Reconsideration and Review of Sentence Imposed in Violation of Records, Accuracy, Laws, and Constitution. (Doc. 766.) After carefully reviewing both Defendant's motion and the record in this case, the Court can discern no grounds for relief. Additionally, the Supreme Court's recent decision in Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551 (2015), is inapplicable to this case. Even assuming that Johnson applies retroactively¹ to defendants sentenced under the guidelines as career offenders,² Defendant Chisholm qualified as a career offender based on two prior drug charges. Therefore, no offenses falling under the residual

¹ In In re Rivero, the Eleventh Circuit concluded that Johnson did not apply retroactively to cases on collateral review. ___ F.3d ___, 215 WL 4747749 (11th Cir. 2015).

² Johnson held that the residual clause of the Armed Career Criminal Act, not the career offender residual clause of § 4B1.2, was unconstitutionally vague.

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clause of United States Sentencing Guideline § 4B1.2 were used to enhance Defendant's sentence, rendering Johnson inapplicable to this case. Accordingly, Defendant's motion is **DENIED**.

SO ORDERED this 21st day of August 2015.

A handwritten signature in black ink, appearing to read "William T. Moore, Jr.", written over a horizontal line.

WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA